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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/796,697	03/09/2004	Benoit Abribat	U 0164-F04A	2889
23657	7590	09/07/2007	EXAMINER	
COGNIS CORPORATION PATENT DEPARTMENT 300 BROOKSIDE AVENUE AMBLER, PA 19002			PRYOR, ALTON NATHANIEL	
			ART UNIT	PAPER NUMBER
			1616	
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			09/07/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

Application No.

10/796,697

Applicant(s)

ABRIBAT ET AL.

Examiner

Alton N. Pryor

Art Unit

1616

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 1/4/07;5/30/07.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-4,6-17,19-30 and 32-39 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4,6-17, and 19-30 and 32-39 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date: _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                        | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date: _____ | 6) <input type="checkbox"/> Other: _____  |

### DETAILED ACTION

- I. Rejection of claims under 35 USC 112, 2<sup>nd</sup> paragraph will not be maintained in light of amendments filed 1/4/07 and 5/30/07. The claims have been amended to recite "consisting essentially of" language.
- II. Rejection of claims under 35 USC 112, 1<sup>st</sup> paragraph will not be maintained in light of amendments filed 1/4/07 and 5/30/07. The phrase "non alkoxyated nonionic surfactants » has been deleted from the claims.
- III. The applicants have argued against the restriction requirement dated 3/22/07 and requested the withdrawal of the requirement. Examiner has considered Applicants' request and has withdrawn the restriction requirement. For this reason examiner relies on office action of 8/4/06, remarks filed 1/4/07 and claims filed 5/30/07 to formulate this office action.

Applicant's arguments filed 1/4/07 have been fully considered but they are not persuasive. See discussion below.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2-4,6-10,12,15-17, and 19-25 remain rejected under 35 U.S.C. 103(a) as being unpatentable over Miller et al (US 6586479). New claim 39 is added to this rejection. Miller et al teach microemulsion (« fine emulsion », column 1 lines 12-16)

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adjuvant compositions comprising emulsifiers such as sorbitan esters (column 2, lines 42-46), nonionic surfactants such as alkylpolyglycosides (column 4, lines 39-48), oils such as fatty acid esters (column 5 lines 30-38), dyes and thickeners, (column 6, lines 35-52), and carriers such as vegetable oils, natural and hydrogenated oils, and liquid paraffins (columns 6-7). The adjuvants are useful in combination with fungicidal active agents (column 7, lines 4-9), as claimed in claim 10. No other agrochemically active agents are disclosed. Thus applicants' components were known to have utility in making microemulsion compositions.

*Response to Applicants' arguments*

Applicants argue:

- 1) Miller does not teach or suggest the composition consisting essentially of the hydrophilic emulsifier, the lipophilic coemulsifiers and water as presently claimed;
- 2) Miller et al clearly states that the hydrophilic surfactant is preferably an amphoteric surfactant and an amphoteric surfactant appears in all examples; and
- 3) The present composition from the teaching of Miller et al. would require undue experimentation without any direction for formulating the composition of the invention.

The examiner argues that the use of the "consisting essentially of" language in the claims only eliminates chemical components that would materially affect the invention. Applicants have not explained how the inclusion of amphoteric surfactant in the instant invention would materially impact the instant invention and would therefore be eliminated by the presence of the "consisting essentially of" language in the claim.

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Although Miller et al only exemplifies the use of amphoteric surfactants does not mean other surfactants such as nonionic surfactants can be employed. Note, Miller et al specifically teach the use of nonionic surfactant in their compositions. Note a reference does not have to exemplify all possible compositions in order to make obvious or suggest an invention. The fact that the reference sets forth the parts of the invention makes it obvious to combine the parts in all possible ways

Claims 2-4,6-10,12,15-17, and 19-25 remain rejected under 35 U.S.C. 103(a) as being unpatentable over Klier et al (US 5538662). New claim 39 is added to this rejection. Klier et al teach microemulsion compositions comprising gelling agent, organic solvent(s), and surfactant(s) (column 3, lines 12-14), wherein the solvents may be esters such as methyl laurate or methyl oleate (column 4, lines 18-47), or aliphatic hydrocarbons such as mineral oils or paraffin oils (lines 49-55). Before gelling, the microemulsions may be oil continuous, water continuous, or bicontinuous (abstract). Nonionic surfactants includes include glycerol and alkylpolyglycosides (column 6, lines 23-43). Other than fungicides, no other agrochemically active agents are disclosed. Thus applicants' components were known to have utility in making compositions.

*Response to Applicants' arguments*

Applicant argues:

The instant composition is formulated as a liquid. However, Klier et al. teaches a composition in a gel form rather than in liquid form at its use temperature.

Examiner argues that a gel is a semi-liquid and there broadly meets the definition of being a liquid.

As noted above, the open language of the above rejected dependent claims allows for the additional agents disclosed in Miller et al and Klier et al.

Claims 1-4,6-17, and 19-30 and 32-38 remain rejected under 35 U.S.C. 103(a) as being unpatentable over the combined teachings of Capuzzi et al (US 5905072) and Auda et al (US 6586366). New claim 39 is added to this rejection. Capuzzi et al teach adjuvants for microemulsion fungicidal compositions (abstract) comprising methyl esters of fatty acids, anionic surface active agents such as sulfosuccinates, at least one nonionic surface active agents such as alkyl polyglucosides, and at least one additional nonionic surfactant such as sorbitan esters of fatty acids (column 1, lines 38-67, column 2, lines 44-62). The adjuvant microemulsions may also contain additives such as antifreeze and antifoam agents (column 3, lines 18-23), and active agents such as phytodrugs, phytochemicals, weed killers, insecticides, and fertilizers (column 4, lines 35-38).

Auda et al teach oil based emulsifiable concentrates and agrochemical formulations comprising at least one oil component, at least one saccharide surfactant, and at least one other nonionic surfactant (column 1, lines 9-15). When the composition contains water, it will form a microemulsion (lines 43-49). The oil component may be a mineral or vegetable oil, or a fatty acid ester such as methyl or ethyl laurate (lines 50-65). The saccharide surfactant may be an alkyl polyglucoside (column 2 lines 52-53). Other components may include antifoaming agents (column 3, line 35) and agrochemical agents such as herbicides, pesticides, insecticides, fungicides, or acaricides (lines 60-63), such as the herbicide glyphosate (column 5-6).

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One of ordinary skill in the art would be motivated to combine these references because they disclose the same adjuvant materials as having utility in making microemulsion agrochemical compositions.

Thus it would have been prima facie obvious to the ordinary artisan at the time the invention was made to have combined applicants' oil, hydrophilic emulsifier, lipophilic co-emulsifier and customary additives into a single microemulsion composition because the prior art teaches that these components, and specific examples thereof as claimed herein, were known to be combinable in a single composition in order to produce a microemulsion composition which was useful for combining with agrochemicals.

*Response to Applicants' arguments*

Applicants argue:

- 1) Capuzzi et al requires an anionic surface-active agent, which is not taught or suggested to be present in the instant invention; and
- 2) Auda et al employ lipophilic coemulsifiers, which are not taught or suggested to be present in the instant invention.

Examiner argues that the use of the "consisting essentially of" language in the claims only eliminates chemical components that would materially affect the invention. Applicants have not explained how the inclusion of anionic surface active agents and lipophilic coemulsifiers in the instant invention would materially impact the instant invention and would therefore be eliminated by the presence of the "consisting essentially of" language.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

***Telephonic Inquiry***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alton N. Pryor whose telephone number is 571-272-0621. The examiner can normally be reached on 8:00 a.m. - 4:30 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Johann Richter can be reached on 571-272-0646. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Alton Pryor  
Primary Examiner  
AU 1616